IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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WRIT PETITION NO : 22805 of 2004

Between:

Smt.E.Bhagyamma, W/o.Sivasankar Goud,
R/o.Bogolu Village, Veldurthy Mandal,
Kurnool District.

..... PETITIONER

AND

1 The Joint Collector, Kurnool, Kurnool District.
2 The Revenue Divisional officer, Kurnool, Kurnool District.
3 The Mandal Revenue officer, Veldurthy Mandal, Kurnool Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or Direction, more particularly one in the nature of Writ of Mandamus to declare the action of the 1st respondent in remanding back the matter to the 2nd respondent vide proceedings dt 17-11-2004 vide Rc,No.CS3/360/2004 without giving any finding on the stay petition as illegal, arbitrary, unconstitutional and violative of the powers conferred upon the 1st respondent as per the control order, 2001 and consequently set aside the proceedings of the 2nd respondent dt 23-9-2004 vide Rc.No.B1151/2004.

Counsel for the Petitioner : MR.J.JANAKIRAMI REDDY

Counsel for the Respondents : GP FOR CIVIL SUPPLIES

The Court at the admission stage made the following :

O R D E R:

The petitioner is a dealer of a Fair Price Shop in Kurnool District. Her authorization was suspended by the second respondent, through order dated 23.09.2004. Aggrieved thereby, the petitioner preferred an appeal before the first respondent, together with an application for grant of stay. Complaining that no orders have been passed therein, she filed W.P.No.17744 of 2004. The writ petition was disposed of by this Court on 1.10.2004, with a direction to the first respondent to dispose of the application for stay filed in the appeal, within one week from the date of receipt of a copy of the order. Acting on the said direction, the first respondent passed an order dated 17.11.2004, directing the second respondent to issue a show-cause notice. The same is challenged in this writ petition.

Heard learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

As observed earlier, this Court directed the first respondent to pass an order in the application for stay filed by the petitioner along with the appeal, within one week. The first respondent has chosen to dispose of the appeal itself, without considering the application for grant of stay. In fact, no exception can be taken to such a course of action. The order passed by the first respondent reads as under:

> "After perusal of records and examination of the case it is noticed that the dealer was suspended without issuing show cause notice. Therefore, the appellant was not given

due opportunity. Hence, the Revenue Divisional Officer, Kurnool, is directed to issue show cause notice duly giving due opportunity to her as dealer and finalise the case accordingly."

From this, it is not clear as to whether the first respondent has set aside the orders passed by the second respondent on the ground that the petitioner was not given an opportunity. He has simply directed the Revenue Divisional Officer to issue a show-cause notice and finalise the case accordingly. If at all any thing, the order demonstrates either lack of clarity or experience on the part of the first respondent, who passed the order.

Appellate powers are conferred on superior officers and authorities to ensure that the exercise of powers by subordinate and inferior officers conforms to the provisions of law apart from ensuring proper exercise of power. An appellate authority has to satisfy himself as to whether the order under appeal conforms to the relevant provisions of law, or whether there was any procedural irregularity. The powers are so vast that the appellate authority can substitute its own view for that of the original authority. If no defect is found in the order under appeal, the appeal has to be dismissed. If any infirmity is detected, two courses are open, namely, to pass an order of its own, by the appellate authority, or to remand the matter to the primary authority. In either case, the order under appeal has to be set aside. These are the common and settled principles, which are expected to be known by every authority conferred with appellate powers. The first respondent happens to be the appellate authority under several provisions of law. It is not known as to how such basic principles were ignored while disposing of the appeal preferred by the petitioner. It is on account of such orders the proceedings get multiplied and the citizens are made to go round the authorities or courts. It is hoped that the situation would improve hereafter.

The allegations against the petitioner are not so serious, nor was it alleged that she is indulging in diversion of essential commodities to black market. The first respondent himself was satisfied that the petitioner ought to have been given notice before the authorization was suspended.

Hence, the writ petition is disposed of, directing that the order of suspension passed against the petitioner shall stand set aside, and that the petitioner shall be entitled to function as Fair Price Shop dealer, till the second respondent disposes of the

proceedings, duly considering the explanation submitted by the petitioner. There shall be no order as to costs.

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9th December, 2004

Note: Issue copy in three days.

(B/o)

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To

1 The Joint Collector, Kurnool, Kurnool District.
2 The Revenue Divisional officer, Kurnool, Kurnool District.
3 The Mandal Revenue officer, Veldurthy Mandal, Kurnool Dist.

4. Two C.Cs to the Govt.Pleader for Civil Supplies,

High Court buildings, Hyderabad (OUT).

5 Two CD copies